



Freedom to Read Foundation News

50 EAST HURON STREET, CHICAGO, ILLINOIS 60611 PHONE (312) 944-6780

Florence McMullin, President

Judith F. Krug, Executive Director

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Jeanne Layton Challenge a Success Highlights of Washington Midwinter Meeting

In a presentation to the Council of the American Library Association at the ALA's 1981 Midwinter Meeting, FTRF President Florence McMullin reported on the business transacted by the Foundation Trustees at their January meeting.

On behalf of the Board of Trustees of the Freedom to Read Foundation, I am delighted to report to you that the matching challenge issued by the Foundation in support of beleaguered Utah librarian Jeanne Layton has been met through the generosity of the library community. Jeanne Layton, you will no doubt recall, had been removed from her position as Library Director of the Davis County Library due to her refusal to buckle under to improper political pressure and remove a title from the shelf. Indeed, the response of the library community to the challenge was nothing short of overwhelming.

It will be recalled that at the 1980 Annual Conference in New York, Dennis Day, President of the Utah Library Association, announced that the Foundation would match \$2.00 for every \$1.00 donated, until the end of the year, up to \$10,000 of Foundation funds. As of December 31, when the challenge expired, \$6,024.00 had been received, \$5,000 of which was matched by the Foundation. This sum includes the \$1,000 contribution from the Resources and Technical Services Division of ALA and \$700 from the Utah Library Association, which is in addition to funds contributed by ULA directly to Layton's defense. It should also be noted that Jeanne Layton was the 1980 recipient of the Robert B. Downs Award for Intellectual Freedom, presented by the University of Illinois. This \$500 award was matched with \$1,000 by Foundation funds.

At present, Layton's outstanding legal debt has been reduced to under \$1,000, and at its 1981 Midwinter meeting, the Board of Trustees voted to retire the remainder of her outstanding balance.

Jeanne Layton, and through her, the entire library community, has indeed won a great victory. The library

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Colloquium Held School Censorship and the Law

In an atmosphere marked, on the one hand, by the rapidly increasing incidence of school text and school library book censorship, and, on the other hand, by a series of confusing and even contradictory judicial rulings, over sixty leading authorities in the field of First Amendment law, practicing attorneys, representatives from the library community, publishers and teachers gathered in Washington, D.C. January 28 and 29 for a highly successful Colloquium on School and School Library Book Censorship Litigation.

The meeting, sponsored jointly by the Freedom to Read Foundation, the American Library Association, the Association of American Publishers and the American Civil Liberties Union, was the first of its kind. Activists and attorneys involved in virtually every major school censorship case were able to exchange experience, and the expertise of some of the most penetrating legal minds was brought to bear on the problem. More than a simple "strategy session," the colloquium sought to develop a comprehensive assessment of the current status and future development of litigation challenging school book censorship.

The colloquium consisted of three major seminar-type sessions. In each session, a major figure in the field prepared a written background paper and made an opening presentation. Comments were solicited from panelists before open discussion. The meeting was arranged to focus first on the social and political atmosphere affecting litigation, moving to questions of legal theory and concluding with an exchange of experience and discussion of practical litigative concerns. The format, however, was relaxed enough so that common questions persisting throughout the meeting could be continually approached from different angles.

The opening session was devoted to "Current Social and Political Trends and Their Implications for Future Litigation." In his background paper, Robert M. O'Neil, President of the University of Wisconsin, identified four types of school censorship situations and related these to the current political atmosphere. The commentators,

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1981 Slate

Committee Nominates Eight for Board of Trustees

Eight candidates for the Freedom to Read Foundation's 1981 election have been slated by a committee composed of Trustees Daniel W. Casey, Mary K. Chelton, and L. B. Woods, chairperson.

Trustees to fill four scheduled vacancies on the Board of Trustees will be chosen from the following list of candidates:

- Lester Asheim, Professor, University of North Carolina School of Library Science, Chapel Hill.
- Pamela G. Bonnell, Director of Audience Development, Dallas Symphony Orchestra.
- Barbara Bryant, Vice President, Phoenix Films, New York, New York.
- Ella Yates Edwards, Director, Atlanta Public Library.
- Elizabeth Huntoon, Librarian, Chicago Public Library.
- Richard P. Kleeman, Vice President, Washington Office, and Staff Director, Freedom to Read Committee, Association of American Publishers.
- Sam G. Whitten, Assistant Professor, University of Texas Graduate School of Library Science, Austin.
- Virginia Young, Trustee, Columbia Public Library, Columbia, Missouri.

According to Freedom to Read Foundation election rules, at least two candidates must be nominated for each vacancy on the board.

Ballots will be mailed on May 1 to all persons holding paid membership in the Foundation on that date.

Nominations by Petition

Persons who wish to *nominate candidates by petition* should submit twenty-five signatures of current members of the Foundation in support of each candidate. Names of petition candidates, statements of consent from the candidates, and the required signatures to support each must be received by the executive director of the Foundation no later than April 20, 1981.

Current Trustees

Elected trustees currently serving on the Foundation Board are Mary K. Chelton (1981), Kenneth Donelson (1981), Richard P. Kleeman (1981), Florence McMullin (1981), Daniel W. Casey (1982), Joan Collett (1982), Burton Joseph (1982), William D. North (1982), and L. B. Woods (1982).

Trustees serving on the Board by virtue of their office in the American Library Association are Frances C. Dean, chairperson of the Intellectual Freedom Committee; Peggy Sullivan, ALA president; Elizabeth Stone, ALA president-elect; and Robert Wedgeworth, ALA executive director.

Colloquium (from p. 1)

former Senator John Culver (D-Iowa), Ira Glasser of the American Civil Liberties Union, Dr. J. Charles Park, Professor of Education at the University of Wisconsin, and Judith F. Krug, executive director of the Freedom to Read Foundation, expounded upon O'Neil's remarks. All pointed specifically, but in different ways, to the growing dangers posed by the rapid growth of the so-called New Right in recent years. Glasser's remarks, in particular, stimulated much discussion. He noted that many of those who have been in the forefront of censorship efforts in schools have shifted at least some of their efforts to demanding the *inclusion* of certain materials—e.g., in the "creationism" controversy.

If the first session was still a bit tentative—though highly stimulating—the second session on "Current Law, Future Legal Theories" was virtually an intellectual *tour de force*. Professor Mark Yudof of the University of Texas Law School, offered an insightful and provocative paper, and similarly challenging remarks—which in turn spurred equally challenging comments—were offered by panelists Vincent Blasi of the University of Michigan Law School and William Van Alstyne of Duke Law School.

The discussion was characterized by much legal subtlety, but even the non-lawyers found the search for a coherent First Amendment strategy to underpin school censorship litigation arguments a fascinating challenge. No consensus could be reached. Professor Yudof seems to lean to a legal theory based on the delegation of authority to the professional, thus stressing the centrality of procedures and policies, although he himself voiced some qualms about this. Others argued that attention needs to be focused more substantively on the content of books and the motivations of would-be censors. In general, there was a sense that—especially in the case of assigned texts as opposed to library materials—legal grounds for alleging censorship are often muddied. In some cases it is very possible to distinguish, as one participant put it, "night from day," but unfortunately many other instances reside in the "twilight zone."

The third session began with comments on practical matters of litigation delivered by Floyd Abrams of Cahill, Gordon & Reindel. The discussion of Abrams'

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Freedom to Read Foundation News is edited by the staff of the Office for Intellectual Freedom, American Library Association. It is issued quarterly to all members of the Foundation.

Regular membership in the Freedom to Read Foundation begins at \$25.00 per year. Contributions to the Foundation should be sent to: Freedom to Read Foundation, 50 E. Huron St., Chicago, Ill. 60611. All contributions are tax-deductible.

Exhibit Spaces and Meeting Rooms: An Interpretation of the LIBRARY BILL OF RIGHTS

In response to numerous requests from public, school and academic librarians for clarification of Article VI of the 1980 revision of the Library Bill of Rights, the Intellectual Freedom Committee submitted, and the ALA Council approved at the 1981 Midwinter Meeting a new interpretation of the Library Bill of Rights entitled Exhibit Spaces and Meeting Rooms.

As part of their program of service, many libraries provide meeting rooms and exhibit spaces for individuals and groups. Article VI of the LIBRARY BILL OF RIGHTS states that such facilities should be made available to the public served by the given library "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use."

In formulating this position, the American Library Association sought to accommodate the broad range of practices among public, academic, school and other libraries, while upholding a standard of fairness. Libraries maintaining exhibit and meeting room facilities for outside groups and individuals should develop and publish policy statements governing their use. These statements can properly define and restrict eligibility for use as long as the qualifications do not pertain to the content of a meeting or exhibit or to the beliefs or affiliations of the sponsors.

It is appropriate for a library to limit access to meeting rooms or exhibit space to members of the specific community served by the library or to groups of a specific category. It is not proper to apply such limitations in ways which favor points of view or organizations advocating certain viewpoints. For example, some libraries permit religious groups to use meeting facilities, while others do not. According to Article VI, both policies are acceptable as long as all religious groups are treated in the same way, irrespective of their doctrines.

Exhibits and meetings sponsored by the library itself should be organized in a manner consistent with the LIBRARY BILL OF RIGHTS, especially Article II which states that "libraries should provide materials and information presenting all points of view." However, in granting meeting or exhibit space to outside individuals and groups, the library should make no effort to censor or amend the content of the exhibit or meeting. Those who object to or disagree with the content of any exhibit or meeting held at the library should be entitled to submit their own exhibit or meeting proposals which should be judged according to the policies established by the library.

The library may properly limit the use of its meeting rooms to meetings which are open to the public, or it may make space available for both public and private sessions. Again, however, the same standard should be applicable to all.

Trustees Vote Dues Hike

At their January meeting, the Foundation trustees voted to increase basic membership dues from the current \$10.00 minimum to a \$25.00 minimum, with a "student" category set at \$10.00. The increase will take effect after ballots for the 1981 election are mailed on May 1.

The dues increase is the first in the Foundation's history, and actually does little more than restore the dues schedule to where it stood in non-inflated currency at the Foundation's founding eleven years ago. The Foundation staff has determined that, taking account of only

mailing, election, auditing and printing expenditures, it now costs approximately \$12.00 annually per member just to finance day-by-day functioning. Thus, with the old dues structure, money was actually lost on regular memberships. If the Foundation is to expand its activity in the challenging years to come, it is essential that each member contribute more than just the service costs of his or her membership. The trustees did conclude, however, that an exception to this principle was justified in establishing the \$10.00 student category, since hopefully student members will remain with the Foundation and become regular members, even sponsor or patron members, in the future.

Highlights (from p. 1)

board's appeal of a lower court decision reinstating Jeanne was denied and one of her main antagonists was defeated for reelection. It was reported at the recent board meeting that he is now serving as a member of the local mosquito abatement commission.

School Censorship Rulings

In other activity, the past six months have seen appeals court decisions in several school book censorship cases in which the Foundation was involved. In *Zykan v. Warsaw (Indiana) Community School Corporation* which involved, among other things, the banning and ultimately the burning of a values clarification text, the Seventh Circuit unfortunately rejected the Zykans' appeal which we supported in an *amicus curiae* brief. The court did leave open the opportunity for plaintiffs to refile. However, the case will not be reactivated.

In the Second Circuit, two cases, *Bicknell v. Vergennes* and *Pico v. Board of Education, Island Trees* were decided together. *Bicknell* involved the removal of *The Wanderers* and *Dog Day Afternoon* from the high school library. In this case, the appeal was denied. However, in the important *Pico* case, which involved the removal of nine books, including those by Kurt Vonnegut, Bernard Malamud, Piri Thomas and others, the district court dismissal was reversed and the case was remanded for trial. The school board has appealed for a hearing *en banc* (to the full circuit court) and we await a decision.

New Litigation

At its 1981 Midwinter meeting, the Board of Trustees confirmed its involvement in two new cases. In Pennsylvania, the Foundation joined with publishers organizations and bookstores in a suit challenging the constitutionality of a new law barring the exhibit of "sexually explicit" materials where minors are present. The new statute could make it impossible to vend or distribute many best sellers and works of modern fiction in places where young people can see them.

In California, the Mt. Diablo School District, situated across the bay from San Francisco, has placed various restrictions on the use of *Ms.* magazine in the high school library. Several individuals and organizations, including the American Civil Liberties Union and *Ms.* itself, have filed suit. To indicate our deep concern for the issues being litigated, the Trustees voted to donate \$250 to the legal effort.

Finally, I must report that the Board of Trustees has voted to increase minimum Foundation dues from \$10.00 to \$25.00 per year with a \$10.00 category remaining for students. This move was necessitated by both the increasing demands upon the Foundation's resources and the continuing inflation. Indeed, the in-

crease does little more than return us to the real rate—in uninflated dollars—established at our founding in 1969. Moreover, staff has determined that it costs the Foundation a minimum of \$12.00 per member simply to meet the costs of membership.

Most important, however, the times demand that the Foundation rest on the most solid financial footing possible. Clearly, the tenor of the times indicate a rise in censorship and the library community must be prepared. Hence, in closing, I urge all of you to join the Foundation and if you are already a member, to increase your contribution if you can. If the great response to the Jeanne Layton appeal is any indication—and I believe it is—then the library community can and will rise to meet the challenges to free expression that lie ahead. The Freedom to Read Foundation remains as always firmly committed to marching in the vanguard of that effort.

Respectfully submitted,
Florence McMullin
President

Colloquium (from p. 2)

paper and of his talk, both by the panelists, attorneys Charles Halpern and Joel Klein, and by the audience brought the colloquium down from the essential but lofty heights of legal theory to the nitty-gritty of actual litigation. A myriad of practical suggestions were offered, but a common theme was the central importance of recognizing that litigation is but *one* aspect of the defense of free expression—and that it is more often a last resort. Litigation strategy *must* be a component of a broader political strategy in defense of free expression and intellectual diversity, not only in schools but in all of society.

The key importance of cooperation and communication between lawyers and the relevant "constituencies"—e.g., librarians, publishers, and teachers—was repeatedly stressed by lawyers and non-lawyers alike. Indeed, the subordination of lawyers to the First Amendment interests of librarians, publishers and teachers was advocated by many on both sides of the professional divide.

The colloquium was an important first step and its success has encouraged all the sponsoring organizations to consider not only the publication of its proceedings, but also the possible scheduling of additional follow-up meetings.

The colloquium was supported financially by a \$1,000.00 grant from the Freedom to Read Foundation.

Pratt v. Independent School District 831

The Lottery wins

The Lottery, a film based on Shirley Jackson's famous 1948 short story about the ritual stoning to death of a woman in a small town, which has been banned from school classrooms numerous times, won a victory January 29 in the court of U.S. District Judge Miles Lord. The movie had been removed from the high school curriculum by the District 831 School Board, Forest Lake, Minnesota, in 1978 after some parents complained about it. The case came to court after several Forest Lake parents supported by teachers and the Minnesota Civil Liberties Union filed suit on behalf of students. The plaintiffs were supported by a \$500 grant from the Freedom to Read Foundation.

After viewing the film, Lord left little doubt that he saw no reason why it should not be shown in the school. "It [banning the movie] was done because of the [movie's] content," Lord said. Such a ban clearly violated the students' First Amendment rights.

School board attorney Paul Ratwik postulated that the board's intent was to respond to the film's "gratuitous violence" and he argued that "it is not unconstitutional for a school board to pay heed to the political winds in the district." Lord, however, responded that if parents are concerned about depictions of violence, "They'll have to throw out their TV sets." He also noted that many students will be registering for the draft and that if they go into the military, "they'll be taught to take a sawtooth bayonet and carve somebody."

The judge agreed that if the board could show that its decision was not based on the film's content, he would reconsider. "There may be a big political message in that movie. It may be there are some people who don't want other people to hear that message," he said.

Freedom to Read Foundation Supports Suit Defending *Ms.*

At their Midwinter meeting, the Foundation trustees voted to contribute \$250.00 to the efforts of parents, students, teachers and the American Civil Liberties Union to reverse restrictions placed on the use of *Ms.* magazine in the high school libraries of the Mt. Diablo (California) Unified School District. *Ms.* magazine itself is also a plaintiff in the legal action.

The suit, filed September 30, 1980, in Contra Costa County Superior Court, continues a dispute which began with the removal of *Ms.* from the library of Ygnacio Valley High School last spring. In June the board decided to require written parental and teacher permission for any student to use the publication. The initial attack on *Ms.* had been organized by a group known as Citizens for the Improvement of Public Schools, on the basis of its allegedly "obscene" and "pornographic" contents.

In response to the legal action, the school board on October 30 amended the guidelines for use of *Ms.* According to the latest version of the guidelines, students over eighteen years old are exempted from all restrictions and teachers are permitted to use excerpts and articles from the magazine without parental permission.

Noting that the plaintiffs in the case are well represented by private counsel and that the *Ms.* Foundation is supporting the litigation, and taking into account the Foundation's own budgetary constraints, the Freedom to Read Foundation board voted the grant as an expression of "deep concern with the issues raised by this important case."

Freedom to Read Foundation

Student members	\$10.00 or more
Regular members	\$25.00 or more
Sponsors	\$50.00 or more
Patrons	\$100.00 or more
Benefactors	\$500.00 or more

Members are entitled to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.

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Foundation Joins in Challenge to Pennsylvania Statute

By a unanimous vote of the trustees, the Foundation board has confirmed a previous decision of the Executive Committee to join in a suit filed in the U.S. District Court for the Eastern District of Pennsylvania which seeks to have Pennsylvania Act 167 of 1980, formerly Senate Bill 544 amending the state criminal code, declared unconstitutional.

The new act, signed by Governor Thornburgh on October 16, 1980, took effect on December 15, 1980. It imposes severe restrictions on the placement of constitutionally protected non-obscene "explicit sexual materials" in establishments that sell and distribute books, magazines, films, recordings and other means of expression. Specifically, it makes criminal the placing of "explicit sexual materials . . . in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place" in such a way as to be "visible" by the public at large, and the making openly available of "explicit sexual materials" in "any business or commercial establishment" where minors "are or will probably be exposed to view all or part of such materials."

The other plaintiffs in the suit are the American Booksellers Association, Association of American Publishers, Council for Periodical Distributors Associations, National Association of College Stores, Robin's Book Store of Philadelphia, Sanford Books of King of Prussia, Pennsylvania and Valley Distributors of Norristown, Pennsylvania.

The complaint filed by the plaintiffs argues that, "by prohibiting the placement in retail establishments to which persons under age 17 are admitted of constitutionally protected non-obscene 'explicit sexual material,'" the amended statutes have "the practical effect of prohibiting the display, and therefore restricting the distribution and sale, of such materials to adults." Further, the new provisions are unconstitutionally vague in failing to define key terms and, since they require the removal of prohibited materials from readily viewed areas, constitute an unlawful prior restraint of speech. "The amendments, by not applying to merchants who exclude from their premises persons under the age of 17, encourage merchants to exclude persons under the age of 17 and thereby chill the rights of the Plaintiffs to sell, and the rights of persons under the age of 17 to view and purchase materials that are not prohibited [to them]."

The plaintiffs' initial motion for a preliminary injunction was denied. The Attorney General of Pennsylvania, however, has agreed to only enforce the law against works which have been declared legally obscene until the issue has been resolved in court.

Report of the Auditors

At its 1981 midwinter meeting, the FTRF Board of Trustees received and approved the annual report of the appointed auditors, Kupferberg, Goldberg & Neimark, Certified Public Accountants, 111 E. Wacker Drive, Chicago, Ill. 60601.

The report stated:

We have examined the statement of assets and fund balance arising from cash transactions of the Freedom to Read Foundation as of August 31, 1980 and 1979 and the related statement of cash receipts and expenditures and fund balance for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in Note 1, the Foundation's policy is to prepare its financial statements on the basis of cash receipts and disbursements; consequently, revenue and the related assets are recognized when received rather than when earned, and expenses are recognized when paid, rather than when the obligation is incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly the assets and fund balance arising from cash transactions of the Freedom to Read Foundation as of August 31, 1980 and 1979, and the revenue collected and expenses paid during the years then ended, using the method of accounting described in Note 1, which method has been applied on a consistent basis.

Freedom to Read Foundation Statement of Assets and Fund Balance Arising From Cash Transactions August 31, 1980 and 1979

	<i>Assets</i>	
	1980	1979
Cash in bank	\$ 2,600	\$ 1,297
Cash in savings account	39,363	39,080
Cash in savings account (David H. Clift Fund)	1,574	1,489
Investment, at cost (market value of \$1,088)	1,036	—
	<u>\$ 44,573</u>	<u>\$ 41,866</u>
	<i>Fund Balance</i>	
Fund balance	<u>\$ 44,573</u>	<u>\$ 41,866</u>

*Statement of Cash Receipts and Expenditures and Fund Balance
For the Years Ended August 31, 1980 and 1979*

	1980		1979	
	Amount	% to Total Receipts	Amount	% to Total Receipts
<i>Receipts</i>				
Memberships received	\$ 43,514	94.8%	\$ 27,693	90.1%
Interest on savings accounts	2,367	5.1	2,852	9.3
Sale of materials	38	.1	196	.6
Total receipts	45,919	100.0	30,741	100.0
<i>Expenditures</i>				
Legal fees	12,770	27.8	8,238	26.8
Meeting and convention expenses	1,186	2.6	2,958	9.6
Grants	16,227	35.3	4,300	14.0
Accounting, audit and election fees	1,575	3.4	1,480	4.8
Printing and duplicating expense	5,496	12.0	4,314	14.0
Stationery expense	2,295	5.0	723	2.4
Postage and mailing	3,624	7.9	174	.6
Temporary office help	39	.1	35	.1
Publications	-	-	70	.2
Franchise tax	-	-	5	-
Space and personnel	-	-	1,000	3.3
Total expenditures	43,212	94.1	23,297	75.8
<i>Excess of Cash Receipts Over Expenditures</i>	2,707	5.9%	7,444	24.2%
<i>Fund Balance, Beginning of Year</i>	41,866		34,422	
<i>Fund Balance, End of Year</i>	\$ 44,573		\$ 41,866	

The accompanying **Notes to Financial Statement** are an integral part of this report.

Note 1. These financial statements are prepared using the "cash basis" of accounting. Accordingly, receipts are recorded only as collected and expenditures are recorded only as actually disbursed. Amounts receivable and payable by the Foundation are not included. At

August 31, 1980, the Foundation had incurred expenses of \$4,000 for which no expenditures had yet been made.

Note 2. The Foundation has been granted exemption from federal income taxes under Section 501(c) of the Internal Revenue Code. Accordingly, no federal income tax provision has been recorded in these financial statements.

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

First Class Mail

Ballots Coming!

This issue of *FTRF News* announces the slate for the 1981 election. Ballots will be mailed on May 1 to all Foundation members who have paid their 1981 dues by that date. If you have overlooked your 1981 contribution, please send your check today.